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In The

Supreme Court of the United States

October Term, 1982

LOUIS SIANO,

Petitioner,

vs.

JUSTICES OF MASSACHUSETTS AND MATTHEW J. RYAN, JR.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

LOUIS SIANO
Petitioner, Pro Se
c/o JOHN CAVICCHI, Esquire
40 Court Street
Boston, Massachusetts 02108
(617) 567-4697

8341

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QUESTIONS PRESENTED

1. Whether the administration of justice in Massachusetts is so fundamentally unfair as to require review by this Court.

2. Whether a suit brought pursuant to 42 U.S.C. §1983 may be used to attack the integrity of a state criminal conviction.

3. Whether the doctrine of absolute prosecutorial immunity, recognized by this Court in *Imbler v. Pachtman*, 424 U.S. 409 (1976), is intended to protect individuals who utilize the tools of their office for private gain.

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No.

In The

Supreme Court of the United States

October Term, 1982

LOUIS SIANO,

Petitioner,

vs.

JUSTICES OF MASSACHUSETTS AND MATTHEW J. RYAN, JR.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioner, Louis Siano, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on January 21, 1983.

OPINIONS BELOW

The opinion of the United States Court of Appeals is published at 698 F. 2d 52 (1983). It is appended hereto (2a). The

judgment of the United States District Court is unpublished and unreported. It appears at page 17a.

JURISDICTION

The judgment of the First Circuit was entered on January 21, 1983. A timely petition for rehearing was denied on February 4, 1983 (1a). This petition is filed within the 90-day requirement. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §§2201-2202 and 42 U.S.C. §1983 are the statutes involved in this case and appear in the appendix at 30a.

STATEMENT OF MATERIAL FACTS

In July 1980,[1] petitioner brought suit against the Justices of Massachusetts (Justices), the District Attorney, Matthew Ryan, Jr., and the United States Fidelity and Guaranty Company (USF&G), alleging a conspiracy to deprive him of his constitutional rights by Ryan and the USF&G.

Against the Justices of Massachusetts, the petitioner limited his cause of action to declaratory relief, seeking a reversal of his conviction pursuant to 28 U.S.C. §§2201-2202.[2]

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1. The Circuit Court incorrectly states the procedural history of the case by one year. This suit was pending at the time of the jury award against the USF&G. The allegations against the District Attorney and insurance company were brought before the Justices of Massachusetts with no result, causing petitioner to file his action in federal court. The United States District Court (17a) correctly states the procedural history.

2. Petitioner takes exception to the court at footnote 1 of its decision misquoting counsel at oral argument. The District Court (21a) and the Circuit

(Cont'd)

In 1972, petitioner was a concessionaire at the Eastern States Exposition Fair Grounds, and a member of a committee formed to investigate the income of the Exposition. Respondent Ryan was, at the same time, the Hampden County District Attorney, an official of the Eastern States Exposition, and an attorney in the law office that represented the Exposition.

The crux of his case alleges that a vengeful Ryan and USF&G used a forged proof of loss, Commonwealth's Exhibit 16, to procure a fraudulent criminal conviction against him. Siano, a World War II disabled veteran, is a diabetic, legally blind in one eye, is losing the sight in his other eye, and is partially deaf. He did not learn until after his criminal trial that the proof of loss was a forgery.

His former attorney, Efrem Gordon, Esq., admitted under oath that Siano's mother's signature was not on the proof of loss in the District Attorney's office after Siano had been indicted, thus the conclusion that her signature was forged when the exhibit was in the possession of Ryan's office:[3]

> Deposition of Efrem Gordon, 10/17/80, pages 28-29
>
> Q. (by Mr. White): Subsequent to his indictment, did you have any conversation with

---

(Cont'd)
Court itself, in quoting from the complaint state relief is sought pursuant to 28 U.S.C. §§2201-2202 (4a). Neither court addressed this issue.

3. Based upon this information, petitioner asked the District Judge to order a reconsideration of Siano's conviction. The Justices opposed the motion, which was subsequently denied and appealed to the Circuit Court. The court does not address this motion.

> anyone connected with the District Attorney's office with regard to a Proof of Loss prior to the actual trial?
>
> A. (by Mr. Gordon): My memory is that I saw it, examined it as conforming to the one that I had taken the signature on except that Christina's signature was not on it.

In 1981, after a jury trial, findings of facts were made by a jury declaring the signatures of petitioner and his mother to be forged on Commonwealth's Exhibit 16. *See* the petition for certiorari in the case of *Siano v. United States Fidelity and Guaranty Co.*, filed herewith. Instead of ordering a new trial on its own motion in Siano's criminal case and reporting the matter to prosecuting authorities, the Justices of Massachusetts reversed the jury verdict and ordered petitioner to pay costs.[4]

The United States District Judge ruled Ryan absolutely immune from civil liability, and refused to reverse Siano's conviction. Siano appealed and the Circuit Court affirmed.[5]

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4. Petitioner filed a motion for summary judgment stating that the courts were bound by the findings of the jury and not vice-versa, *American Ins. Co. of City of Newark, NJ v. Keane*, 98 U.S. App. D.C. 152, 233 F. 2d 354, *cert. denied*, 352 U.S. 913 (1956); *O'Shaugnessy v. Besse*, Mass. App. Adv. Sh. 179, 389 N.E. 2d 1049 (1979), but the District and Circuit Courts failed to address this issue.

5. In order to avoid repetition, petitioner hereinafter adopts the facts as stated by the courts below.

REASONS FOR GRANTING THE WRIT

I.

The decision below raises important questions regarding the administration of justice in the Commonwealth of Massachusetts.

Petitioner, after discovering the forgery, sought only to clear his name and reputation. He was given a suspended sentence and probation. By the time his case reached the Supreme Judicial Court of Massachusetts, his probation was terminated. He therefore had no remedy by way of federal habeas corpus. His only remedy is the case now at bar.

It is unfortunate that Massachusetts appears to tolerate conduct of a member of the bar that makes use of forged documents, coercion, intimidation and use of influence to convict and sustain that conviction. Even the then governor of Massachusetts, Governor Dukakis, ordered a state police investigation, which turned the matter over to the jurisdiction of the Board of Bar Overseers of the Supreme Judicial Court in 1978 (23a). Nothing was done.

As already mentioned, a jury vindicated the petitioner, but the courts would not. Petitioner submits that the case is an actual case of controversy which should have been decided under 28 U.S.C. §§2201-2202. *Alvator v. Freedman,* 319 U.S. 359 (1943). He is suffering under the stigma of a criminal conviction for an act which he and a jury say he did not commit. He has repeatedly been denied post trial relief in Massachusetts in the face of the blatant fact that the document used to convict him was a forgery.

In providing the remedy of declaratory judgment, Congress intended to avoid the accrual of actual damages of one not certain of his rights and to afford him an early adjudication. *Dewey v.*

Almay Chemical Co. American Arcade, 137 F. 2d 68 (3rd Cir. 1943), *cert. denied,* 320 U.S. 761. But where there is a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon facts alleged, the judicial function may be properly exercised, although adjudication of litigants' rights may not require the award of process or payment of damages and there be no allegation of irreparable injury. *Stephenson v. Equitable Life Assurance Society of the United States,* 92 F. 2d 406 (4th Cir. 1937).

Clearly, the case at bar is one deserving of declaratory relief. Petitioner is seeking to have his conviction declared invalid. He goes through life with an undeserved criminal record. He continues being a convicted felon. Clearly this Court has jurisdiction to provide relief under 28 U.S.C. §§2201, 2202. *Skelly Oil Co. v. Phillips Petroleum Co.,* 339 U.S. 667 (1950).

II.

The decision of the court below conflicts with other jurisdictions wherein a suit brought pursuant to 42 U.S.C. §1983 may be used to attack a state court conviction.

There is a difference of opinion in the various circuits regarding whether a state court conviction may be attacked in a §1983 claim. The Fifth Circuit proposes the view that a §1983 action can never be used to attack the integrity of a state criminal conviction. *Cavett v. Ellis,* 578 F. 2d 567 (1978). The Seventh Circuit adopts nearly an identical stance, *Hanson v. Circuit Court of the First Judicial Circuit,* 591 F. 2d 404, *cert. denied,* 444 U.S. 907.

Two other circuits have reached the opposite view, finding that a §1983 action may at times be an appropriate vehicle for challenging the validity of a state court conviction, *Shipp v. Todd,*

586 F. 2d 133 (9th Cir. 1978); *Strader v. Troy,* 571 F. 2d 1263, 1269 (4th Cir. 1978).

The Supreme Court has not yet considered the scope of §1983 actions challenging the constitutionality of state court convictions, though it has acknowledged that "the demarcation line between civil rights actions and habeas petitions is not always clear." *Wolff v. McDonnell,* 418 U.S. 539, 579, 94 S. Ct. 2963, 2986, 41 L. Ed. 2d 935 (1974).

Petitioner submits that the time is ripe for this Court to adjudicate this issue.

III.

The decision below conflicts with the decisions of other Courts of Appeals as to the proper application of the doctrine of prosecutorial immunity.

In *Imbler v. Pachtman,* 424 U.S. 409 (1976), this Court held that in initiating a prosecution and presenting a state's case, a prosecutor is immune from civil suit for damages under 42 U.S.C. §1983. *Id.* at 431. This absolute immunity, however was not to encompass prosecutors engaged in administrative or investigative functions, but protects the prosecutor only in his role as advocate for the state. *Id.* at 29-31. In determining the immunity, the focus is on the functional nature of the individual's activities, rather than on the individual's status. *Id.* at 30.

In reliance upon what it believed to be the principle established under this Court's decision, the First Circuit has here held that the District Attorney is absolutely immune even when engaging in administrative or investigative functions. As that court stated, actions which would result in damages liability if performed by another state actor remain uncompensated if performed by a state

prosecutor. Such a broad interpretation of the doctrine of absolute immunity does not coincide with the interpretation rendered by this Court and followed in many other jurisdictions.

The difficulty of the First Circuit arises from that court's inability to determine which acts are investigative and which advocative. Indeed, while other Circuit Courts have managed to clearly distinguish between what actions constitute investigative and administrative duties as opposed to advocacy duties, the First Circuit's decision undeniably blurs that line. Even the cases cited by the First Circuit maintain that important distinction. *See, e.g., Briggs v. Goodwin,* 569 F. 2d 24 (D.C. Cir. 1977), where that court held that a prosecutor is not protected for action outside the scope of his authority and is not protected in his investigative roll. The court held in that case that the prosecutor's use of known false answers is an act of investigative rather than advocacy, and was, therefore, outside the confines of absolute immunity. *See also, Norton v. Liddle,* 620 F. 2d 1375, 1379 (10th Cir. 1980); *Henzel v. Gerstein,* 608 F. 2d 654, 657 (5th Cir. 1979); and *Koch v. Grimminger,* 197 Neb. 706, 223 N.W. 2d 833 (1974).

In *Koch,* the court realized that although a public prosecutor is acting within the scope of his office when determining whether to file a criminal prosecution and is immune from suit when acting in good faith, he is not acting within the scope of his authority, and is not protected where, knowing that a particular charge is groundless in law or in fact, he nonetheless intentionally files charges and thus acts through a corrupt motive.

Although the First Circuit did recognize that the "prosecutor's immunity is narrowly circumscribed, encompassing only those actions necessary, 'in initiating a prosecution and in presenting the state's case'," the court did not recognize the categorization of actions which other jurisdictions follow in determining whether an act was within the scope of the prosecutor's quasi-judicial

function, and therefore within the scope of the immunity. *Compare* the holding in this case that the knowing use of what a jury found to be a forged instrument was not an investigatory act *with* the holding in *Koch* that the knowing use of false testimony was an investigatory act.

IV.

The decision below raises significant and recurring problems concerning the classification of prosecutorial actions for purposes of the application of the doctrine of absolute prosecutorial immunity.

The First Circuit's opinion in this case reflects important policy considerations growing out of bona fide efforts to afford prosecutors immunity from suits for injuries resulting to defendants as a result of prosecutions conducted in good faith. Since this Court has already given recognition to situations in which prosecuting attorneys will be absolutely immune from suit, there are some compelling reasons that some definitive guidelines in the application of the doctrine of absolute immunity should now be marked by this Court. Both litigants and lower courts urgently need the assistance of this Court in understanding the policy and language of *Imbler v. Pachtman, supra.*

Among the questions thus posed are:

1. What activities performed in the course of his office constitute a prosecutor's investigative activities, and where does his role as advocate for the state begin? Does the compilation of testimony and evidence constitute an investigative function outside the protection of absolute immunity, as held by the District Court Circuit, or does it constitute an activity which is within the protection of absolute immunity, as held in the First Circuit?

2. Even if an activity falls within the protection of the doctrine of absolute prosecutorial immunity, should lower courts be required to closely scrutinize allegations in a complaint in which it appears that the injured party may be able to provide evidence of vengeful or malicious motive on the part of the prosecutor?

3. Should absolute immunity be afforded to a District Attorney whose questionable involvement in activities apart from his office, such as the Eastern States Exposition, results in his reputation being open to question, when that District Attorney subsequently indicts one making allegations against him? It should be noted that prosecutors have personal lives and interact with individuals in personal business and social settings. It should further be noted that they are human beings subject to human weaknesses of greed and revenge and may engage privately in activities to satisfy those motivating forces. Moreover, they are also subject to the temptation to use their offices to attain their personal goals and to prevent others from interfering with their activities. The doctrine of absolute immunity should not be evoked to afford protection to private individuals who utilize the tools of their public office to obtain revenge against others.

Finally, the correctness of the decision below, even assuming the propriety of the absolute immunity afforded to the District Attorney, is open to serious question. The record shows quite plainly and the jury did so find, that the proof of loss used to convict the petitioner was forged and that the prosecuting attorney knew it. The record further reveals that the District Attorney had a strong motive for revenge against the petitioner, that the District Attorney warned the petitioner that he would be sorry, that at trial the judge was a good friend of Ryan, that Ryan was needlessly present in the courtroom, that he engaged in activities such as intimidating the petitioner's witnesses. Clearly, the prosecutor was at none of these times acting in a role of advocate for the state. He was a private individual who was using the tools of his office in bad faith to satisfy a personal vendetta against the petitioner.

CONCLUSION

For these reasons a writ of certiorari should issue to review the judgment and opinion of the First Circuit Court of Appeals.

Respectfully submitted,

JOHN CAVICCHI
Attorney for Petitioner

APPENDIX

NOTICE OF DENIAL OF PETITION FOR REHEARING

No. 82-1467.

LOUIS SIANO,

Plaintiff-Appellant,

v.

JUSTICES OF MASSACHUSETTS, ET AL.,

Defendants-Appellees.

BEFORE
COFFIN, Chief Judge,
BOWNES AND BREYER, Circuit Judges.

ORDER OF COURT,

Entered: February 4, 1983

Upon consideration of appellant's petition for rehearing,

It is ordered that said petition be and the same hereby is denied.

By the Court,

DANA H. GALLUP, Clerk.

By Francis P. Scigliano
Chief Deputy Clerk.

[cc: Messrs. Cavicchi and Ms. Brown]

JUDGMENT AND DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 82-1467.

LOUIS SIANO,

Plaintiff-Appellant,

v.

JUSTICES OF MASSACHUSETTS, ET AL.,

Defendants-Appellees.

Entered: January 21, 1983

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

s/ Dana H. Gallup
Clerk.

[cc: Messrs. Cavicchi, McDonough and Ms. Brown]

Judgment and Decision

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 82-1467

LOUIS SIANO,

Plaintiff-Appellant,

v.

JUSTICES OF MASSACHUSETTS, ET AL.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Frank H. Freedman, *U.S. District Judge*]

Before

Coffin, *Chief Judge,*

Bownes and Breyer, *Circuit Judges.*

John Cavicchi, for appellant.

Roberta Thomas Brown, Assistant Attorney General, Chief, Torts Division, with whom *Francis X. Bellotti,* Attorney General, was on brief, for Justices of Massachusetts, et al.

John T. McDonough, for Matthew J. Ryan, Jr.

Judgment and Decision

January 21, 1983

BOWNES, *Circuit Judge.* Plaintiff-appellant Louis Siano appeals the dismissal of his action against the Justices of Massachusetts and Matthew J. Ryan, Jr., District Attorney of Hampden County, Massachusetts, pursuant to Fed. R. Civ. P. 12(b)(6), "for failure to state a claim upon which relief can be granted." In our review we must therefore accept the allegations in the complaint as true. *Conley v. Gibson,* 335 U.S. 41, 45-46 (1957); *O'Brien v. DiGrazia,* 544 F.2d 543, 545 (1st Cir. 1976), *cert. denied,* 431 U.S. 914 (1977).

The complaint alleges that the

> action arises under the United States Constitution, particularly under the provisions of the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, under federal law, particularly Title 28 of the United States Code, Section 2201, 2202, and Title 42 of the United States Code, Sections 1983, 1985.[1]

Jurisdiction is based on 28 U.S.C. §§1331 and 1343. The factual background of the case, which is inextricably intertwined with prior proceedings in the Massachusetts' courts, is important for an understanding of the issues.

---

1. In his brief Siano maintains that the action against the Justices is based solely on the Declaratory Judgment Act, 28 U.S.C. §2201, 2202. At oral argument, when questioned about the legal basis of this action, counsel stated that action was brought pursuant to 42 U.S.C. §1983. Our review proceeds on the assumption that Siano is alleging a violation of his rights by the Justices pursuant to section 1983 and is seeking as relief a declaratory judgment that his conviction is invalid.

Judgment and Decision

The State Proceedings

In 1972, Siano was a concessionaire at the Eastern States Exposition Fair Grounds and a member of a committee which investigated the Exposition's income. In his role as committee member, Siano charged that defendant Ryan and others were defrauding the Exposition of certain income. According to Siano, Ryan told him that he would be sorry.

On July 3, 1972, a garage owned by Siano and his mother was destroyed by an explosion followed by a fire. Siano was present when the explosion and fire occurred and observed several youngsters standing near the garage. He filed a "proof of loss" form with his insurer, United States Fidelity and Guarantee Co. (USF&G), claiming $2,500 for damage to the building and $5,000 for contents. This form was filled out in longhand, notarized by Siano's attorney, and signed by both Siano and his mother. Before submitting the form to USF&G, Siano made a photocopy of it and stored it in a freezer at his family restaurant.

Siano alleges that before signing the form he added the following language (the "disclaimer clause"):

> I have reason to believe that the night before and the morning of the fire that the garage was broken into and a lot of material was stolen. I do not want to cheat the insurance company so I am willing to compromise so it will be fair to the insurance co and me. Thank you.

The proof of loss form relied on by USF&G (hereinafter referred to as "Exhibit #16, its designation in the state court proceedings) contained no such disclaimer, and USF&G did not honor Siano's claim. Instead, it turned the "proof of loss" over to the Hampden

County District Attorney. Siano was subsequently indicted for arson and for filing a false claim in an attempt to defraud his insurance company.[2]

The prosecutor at Siano's state court trial was an assistant district attorney. According to Siano, Ryan was present in the courtroom each day of the trial, and "was like an animal in the hallway in the presence of the jurors of the court, the court officers and wittnesses [*sic*]." After a private investigator had testified on Siano's behalf, Ryan allegedly yelled at this witness, swearing that he had no right to testify. Siano further alleged that the presiding judge and three of the jurors were friends of Ryan.[3]

The trial judge directed a verdict in Siano's favor on the arson charge. Siano was, however, convicted by the jury of having filed a fraudulent insurance claim, and sentenced to a three-year probation term. He filed a bill of exceptions, all of which were overruled by a rescript opinion.

Two and one-half years after his conviction, Siano went to his attorney's office to review his case. He was shown a copy of Exhibit #16, the proof of loss form introduced at his trial. Siano then realized that this form did not contain the disclaimer clause, and that the signatures on the form were neither his nor his mother's. Siano retrieved his copy of the proof of loss from his freezer, and on the basis of the two documents filed a motion

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2. If the contents of the garage had previously been stolen, any insurance claim for their value would be fraudulent. The disclaimer clause would, however, obviate any finding of fraudulent intent.

3. The record before this court does not indicate whether Siano objected to any of these alleged infirmities during the trial.

for a new trial. This motion was denied by the Superior Court, and affirmed upon appeal to the Appeals Court. On June 2, 1980, the Massachusetts Supreme Judicial Court denied Siano's application for further appellate review.

Siano commenced his first civil action in the Massachusetts courts in April 1979. In this civil action, he sought multimillions of dollars in damages against USF&G, alleging that the insurance company had caused a forged proof of loss to be delivered to Ryan. Siano's suit was based on intentional infliction of emotional distress. Ten special questions were submitted to the jury, which found: that the signatures of Siano and his mother on Exhibit #16 were forged; that USF&G knew that the signatures were forged; that USF&G voluntarily delivered the forgery to the district attorney; that USF&G's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency"; and that, although USF&G did not intend to inflict emotional distress upon Siano, it should have known that its conduct was likely to have such an effect. As compensation for the emotional distress suffered, the jury awarded Siano $22,500 damages.

Following the jury award, USF&G filed a motion for judgment notwithstanding the verdict on the ground that Siano's tort claim was time-barred by the applicable statute of limitations. The motion was granted. The court found that Siano, in the exercise of ordinary diligence, should have become aware of the alleged forgery when Exhibit #16 was both read and shown to him at his criminal trial more than five years earlier. In dicta, the court gave two additional reasons for granting USF&G's motion. First, because Siano had twice before litigated and lost the forgery issue — at the criminal trial and subsequently on his motion for a new trial — the doctrine of collateral estoppel would prevent Siano from again litigating this issue. Second, the court

expressed grave reservations as to the sufficiency of the evidence to sustain the jury's finding that USF&G knew that Exhibit #16 was a forgery.

The Federal Proceedings

On July 21, 1980, while USF&G's motion for judgment notwithstanding the verdict was still pending, Siano filed this civil action in federal district court against USF&G, District Attorney Ryan, and the Justices of Massachusetts. Siano alleged that Ryan and the insurance company conspired together to use forged evidence to obtain a criminal conviction against him. Ryan's alleged motivation was retaliation for the fraud accusations which Siano had made against him. Siano sought damages of $104,000,000 against these defendants. As against the Justices, Siano alleged that they repeatedly affirmed his conviction, knowing that it was based on forged evidence and sought a declaratory judgment that his state conviction was invalid.

A United States magistrate recommended dismissal of the complaint as to all defendants. Siano filed objections, which were reviewed by the district court. The district court accepted the recommendation of dismissal as to the Justices and Ryan, directed entry of final judgment on behalf of these two defendants, and denied Siano's motion for summary judgment. It is this order which is before us.

The Claim Against The Justices

Siano's suit against the Justices of Massachusetts does not seek monetary damages as compensation for the alleged violations

of his constitutional rights.[4] Rather, Siano attempts to use the section 1983 claim as a method of challenging the validity of his state court conviction and seeking a new trial. The relief sought by Siano is more akin to that provided in a habeas corpus action pursuant to 28 U.S.C. §2254. Siano is precluded from filing a habeas petition since he has served out his parole term, and thus no longer satisfies the "in custody" requirement of federal habeas relief. Siano's claim against the Justices presents an issue of first impression in this circuit: Does a 42 U.S.C. §1983 action lie to attack the validity of a state court conviction when state avenues of appeal have been exhausted and the petitioner is no longer in custody.

The district court below, in dismissing Siano's action against the Justices, relied on the view expressed in earlier Fifth and Seventh Circuit opinions—"a view which I believe the First Circuit Court of Appeals would adopt if squarely presented the issue—that an action pursuant to 42 U.S.C. §1983 cannot be used to attack the validity of a state court conviction. *Hanson v. Circuit Court of First Judicial Circuit,* 591 F.2d 404, 410-11 (7th Cir.) *cert. denied,* 444 U.S. 907 (1979); *Cavett v. Ellis,* 578 F.2d 567, 568-69 (5th Cir. 1978)." While Siano's case squarely poses the issue, and the Fifth Circuit's rule is likely to be recognized as the law, we do not presently rest our decision on this point.[5] Siano's

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4. Siano correctly perceives that he is precluded from bringing a section 1983 damages action against the Justices by the doctrine of judicial immunity. See *Stump v. Sparkman,* 435 U.S. 349, 356-57 (1978).

5. The federal appellate courts which have directly addressed this issue, which implicates the writ of habeas corpus and comity between the state and federal courts, have reached diametrically opposed results. The Fifth Circuit is the leading proponent of the view that a section 1983 action can never be

(Cont'd)

case is easily disposed of on other grounds. Therefore, for purposes of this appeal, we will assume, without deciding, that an individual

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(Cont'd)
used to attack the integrity of a state criminal conviction. In *Cavett v. Ellis*, 578 F.2d 567 (5th Cir. 1978), an individual who had finished serving his state prison term sought a declaratory statement that his criminal convictions were unconstitutionally invalid. The Fifth Circuit found that:

> Stripped to the bone, the plaintiff's action under §1983 is little more than a habeas corpus action without a custody requirement. We do not believe that §1983 was meant to be a substitute for habeas corpus when there is no custody. . . . Under his theory of §1983, the appellant would have us sit in perpetual review of all criminal decisions. We will not make the appellant's §1983 action the greater writ by avoiding the custody requirement of §2254 indirectly while refusing to extend the custody requirement directly.

Id. at 569 (citation omitted). The court put forth two interests which it felt justified its ban on section 1983 actions — the states' interest in the finality of their criminal convictions, and the amount of judicial time which review of section 1983 actions would consume. *See also Delaney v. Giarruso*, 633 F.2d 1126, 1128 (5th Cir. 1981) (per curiam) (section 1983 action precluded whenever the petitioner seeks to attack the validity of a state court conviction, even when the remedy sought is monetary).

A nearly identical stance has been adopted by the Seventh Circuit. In *Hanson v. Circuit Court of the First Judicial Circuit*, 591 F.2d 404 (7th Cir.), *cert. denied*, 444 U.S. 907 (1979), the court was faced with a section 1983 action filed by a petitioner whose criminal conviction resulted only in the imposition of a fine. The court dismissed this action for failure to state a claim for which relief could be granted, finding that:

> Congress intended that habeas corpus provide not only the exclusive federal remedy for those in custody, but also the exclusive federal remedy for all who seek to attack state court

(Cont'd)

in Siano's situation could sustain a cause of action for a declaratory judgment as to the validity of a state court conviction under 42 U.S.C. §1983.

To prevail upon his section 1983 claim, Siano must demonstrate that the Justices, acting under color of Massachusetts law, deprived him of a right secured by the federal Constitution or federal law. This, he has failed to do.

(Cont'd)

> judgments of convictions. Thus, convictions not subject to question in habeas are immune from collateral inquiry by the federal courts. . . .
>
> . . . Direct review by the United States Supreme Court is sufficient to preserve the role of the federal courts as the ultimate guardians of federally guaranteed rights.

Id. at 410-11. *See also Waste Management of Wisconsin, Inc. v. Fokakis*, 614 F.2d 138, 141 (7th Cir. 1980).

Two other circuits have reached the opposite result, finding that a section 1983 action may at times be an appropriate vehicle for challenging the validity of a state court conviction. In *Shipp v. Todd*, 568 F.2d 133 (9th Cir. 1978) (per curiam), a former state prisoner brought a section 1983 action, seeking a declaratory statement that his conviction was invalid and expungement of his criminal records. The circuit court reversed the district court's dismissal of the action, explaining that: "Although appellant has served the sentences imposed, . . . the maintenance of his criminal records continues to operate to his detriment." *Id.* at 133 (citations omitted). Similarly, the Fourth Circuit assumed, without discussion, that a section 1983 action could in certain circumstances be an alternate method of collaterally attacking a state criminal conviction. *Strader v. Troy*, 571 F.2d 1263, 1269 (4th Cir. 1978). *See also Rimmer v. Fayetville Police Department*, 567 F.2d 273, 275 (4th Cir. 1977).

The Supreme Court has not yet considered the scope of section 1983 actions challenging the constitutionality of state court convictions, though it has acknowledged that "the demarcation line between civil rights actions and habeas petitions is not always clear." *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974).

Judgment and Decision

Siano alleges no errors in evidentiary rulings made during his trial, nor does he claim that the state's procedures were constitutionally infirm. His only allegation is that the state court Justices reached a wrong result by not accepting his "proof" of the alleged forgery. There is, however, no federally created right to have a state judge reach a particular result. The federal courts exercise no supervisory powers over the state courts. A state court decision, if rendered in accordance with constitutional requirements, will not be overturned by a federal court, even if it appears that the wrong result was reached. Siano's trial and ultimate conviction transgressed no federally created right and therefore must stand. The state court's denial of Siano's motion for a new trial also passes section 1983 scrutiny. There is no federally created right to have a state judge grant a new trial motion. *Griffin v. Illinois,* 351 U.S. 12, 18 (1956). We therefore affirm the district court's dismissal of Siano's claim against the Justices, finding that, even if his section 1983 action is cognizable, he has failed to allege any constitutional infirmity leading to his conviction.[6]

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6. We also note that Siano would be collaterally estopped from litigating the issue of forgery in a federal forum. Siano already has had two full and fair opportunities to present proof of the forgery to the Massachusetts state courts. His conviction following trial and the denial of his motion for a new trial necessarily imply that the state courts did not accept his "proof." We accord preclusive effect to these state court determinations, because, as the Supreme Court explained:

> nothing in the language or legislative history of §1983 proves any congressional intent to deny binding effect to a state-court judgment or decision when the state court, acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims, and thereby has shown

(Cont'd)

Judgment and Decision

The Claim Against The State Prosecutor

Siano's suit against Ryan seeks monetary damages under section 1983 for allegedly initiating a prosecution in bad faith and using tactics during Siano's trial offensive to due process and a fair trial. Ryan maintains that the doctrine of absolute prosecutorial immunity shields him from all liability.

When initiating a prosecution and presenting the state's case, a prosecutor is absolutely immune from a civil suit for damages under section 1983. *Imbler v. Pachtman,* 424 U.S. 409, 431 (1976). Actions which would result in damages liability if performed by another state actor, remain uncompensated if performed by a state prosecutor. This prosecutorial immunity does not reflect judicial or societal approval of prosecutorial misconduct. Rather, the doctrine of prosecutorial immunity reflects a balance between an individual's right to be treated fairly by prosecutors and society's need to keep the criminal justice system functioning without undue interference and protracted delay.

As the Supreme Court has recognized, the doctrine of prosecutorial immunity is not cost-free. "To be sure, this immunity

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(Cont'd)

> itself willing and able to protect federal rights. . . . There is, in short, no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to relitigate [via a section 1983 action] an issue already decided in state court simply because the issue arose in a state proceeding in which he would rather not have been engaged at all.

Allen v. McCurry, 449 U.S. 90, 103-04 (1980) (footnote omitted). *See also Mastracchio v. Ricci,* 498 F.2d 1257, 1260 (1st Cir. 1974) ("a state criminal conviction can have a collateral estoppel effect upon a federal civil rights action"), *cert. denied,* 420 U.S. 909 (1975).

does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty." *Id.* at 427. These costs, however, are justifiable. Prosecutorial immunity allows the honest prosecutor to meet his/her responsibilities, free of the constraint of constantly considering potential liability for damages. "[T]he alternative of qualifying a prosecutor's immunity would disserve the broader public interest. It would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system." *Id.* at 427-28 (footnote omitted). Prosecutorial immunity permits a prosecutor to concentrate his/her efforts on enforcing the criminal law. The prosecutor need not divert energy and attention to defending damage suits brought by disappointed criminal defendants. "Such suits could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate." *Id.* at 425 (citation omitted). Similarly, the doctrine conserves judicial time and effort. Various post-trial proceedings, other than a section 1983 damages action against a prosecutor, are available to ensure that a criminal defendant was fairly convicted. In sum, the doctrine of prosecutorial immunity serves both to protect the functioning of the criminal justice system and to further its goal of determining guilt or innocence accurately.

A prosecutor's absolute immunity is narrowly circumscribed, encompassing only those actions necessary "in initiating a prosecution and in presenting the State's case." *Id.* at 431. This immunity, thus, extends only to those actions which can be characterized as "quasi-judicial." The very nature of the judicial process grants some assurance to a criminal defendant that he/she will not become the victim of a dishonest prosecutor. If a prosecutor maliciously initiates a prosecution, the trial that follows

should normally vindicate the defendant. Similarly, when a prosecutor wrongfully presents evidence knowing it to be false, or otherwise engages in trial misconduct, "jury discretion is brought to bear in evaluating the persuasiveness of the prosecution's presentation, and defense counsel enjoys the opportunity to employ a variety of procedural devices to challenge the accuracy of the Government's position and thereby to preserve the integrity of the truthseeking enterprise." *Briggs v. Goodwin,* 569 F.2d 10, 24 (D.C. Cir. 1977), *cert. denied,* 437 U.S. 904 (1978). Although not foolproof, the indictment and trial process is the best safeguard against the misuse of prosecutorial immunity.

Turning to the specific allegations of prosecutorial misconduct, we find that Siano has no right to civil redress for any of Ryan's alleged actions. Ryan's decision to initiate the prosecution of Siano unquestionably qualifies for immunity under *Imbler. See id.* at 23. This is so even if Ryan's actions "may have been undertaken maliciously, intentionally, and in bad faith." *Norton v. Liddel,* 620 F.2d 1375, 1379 (10th Cir. 1980).

Nor can Ryan's alleged actions in connection with Siano's trial give rise to liability. Ryan's presence in the courtroom constitutes no violation of Siano's rights. The trial was open to all members of the public, including Ryan. Moreover, Ryan's presence was fully justifiable, since an assistant district attorney, under Ryan's supervision, was presenting the government's case. Similarly, Siano's dramatic claim that Ryan "was like an animal in the hallway" alleges no violation of a federally created right. Even if Ryan did yell at a private investigator, "swearing that he had no right to testify," no harm resulted; this witness had already testified. Thus, wholly apart from prosecutorial immunity,

Siano has failed to allege any federally cognizable prosecutorial misconduct during the trial.[7]

Finally, though the pleadings are not clear on this, Siano may be alleging that Ryan knowingly allowed the Commonwealth to use forged evidence in obtaining his criminal conviction. Such an action, while heinous, nonetheless falls within the ambit of Ryan's absolute prosecutorial immunity.[8] *See Imbler v. Pachtman,* 424 U.S. 409 (1976); *Henzel v. Gerstein,* 608 F.2d 654, 657 (5th Cir. 1979); *Heidelberg v. Hammer,* 577 F.2d 429, 432 (7th Cir. 1978).

The judgment of the district court dismissing Siano's claims against Ryan for failure to state a claim for which relief can be granted is affirmed.

Affirmed.

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7. Siano also alleges that the judge and three of the jurors were friends of Ryan. Even accepting this allegation as true, it establishes no impropriety in Ryan's behavior. Siano was free to challenge the composition of the jury, petition the judge to recuse himself, or move for a new trial.

8. We realize that the absolute immunity granted in *Imbler* extends only to a prosecutor's action in initiating a prosecution and presenting the government's case. "[T]his absolute immunity does not extend to acts essentially unrelated to the judicial process, i.e., acts done in the prosecutor's investigatory role." *Guerro v. Mulhearn,* 498 F.2d 1249, 1256 (1st Cir. 1974) (citations omitted). Since all of Ryan's alleged misconduct concerned only the actual prosecution of Siano, and was well within the scope of absolute immunity, we need not consider the doctrine of qualified prosecutorial immunity.

JUDGMENTS AND OPINION OF THE UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CA 80-1627-F

LOUIS SIANO,

Plaintiff

v.

JUSTICES OF MASSACHUSETTS, ET AL,

Defendants

Pursuant to this Court's order of May 3, 1982 wherein the motion to dismiss of the Justices of Massachusetts is allowed, it is hereby ordered, adjudged and decreed that judgment be entered for the defendant Justices of Massachusetts.

George F. McGrath
Clerk

s/ John C. Huckerbruch
Deputy Clerk

Dated this 3rd day of May, 1982
at Springfield, Massachusetts

Judgments and Opinion

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CA 80-1627-F

LOUIS SIANO,

Plaintiff

v.

MATTHEW J. RYAN, JR., ET AL,

Defendant

Pursuant to this Court's order of May 3, 1982 wherein the motion to dismiss of the defendant Matthew J. Ryan, Jr., District Attorney of Hampden County, Commonwealth of Massachusetts, is allowed, it is hereby ordered, adjudged and decreed that judgment be entered for the defendant Matthew J. Ryan, Jr.

George F. McGrath
Clerk

s/ John C. Huckerbruch
Deputy Clerk

Dated this 3rd day of May, 1982
at Springfield, Massachusetts

Judgments and Opinion

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 80-1627-F

LOUIS SIANO,

Plaintiff

v.

JUSTICES OF MASSACHUSETTS, MATTHEW J. RYAN, JR., DISTRICT ATTORNEY OF HAMPDEN COUNTY, COMMONWEALTH OF MASSACHUSETTS, UNITED STATES FIDELITY AND GUARANTEE COMPANY,

Defendants

ORDER

May 3, 1982

FREEDMAN, D.J.

This case came before me on the objections of the plaintiff Louis Siano to the findings and recommendation of a magistrate on the defendants' motions to dismiss and plaintiff's motions for summary judgment. Having reviewed *de novo* the portions of the magistrate's findings and recommendation to which objection is made, and having considered the arguments of the parties in their memoranda in light of the pertinent authorities, and for the reasons set forth in the Memorandum this date, I have determined as follows:

1. That the magistrate's recommendation on the motion to dismiss pursuant to F.R.Civ.P. 12(b)(6) of the Justices of Massachusetts should be, and hereby is, accepted, and that said motion should be, and hereby is, ALLOWED;

2. That the magistrate's recommendation on the motion to dismiss pursuant to F.R.Civ.P. 12(b)(6) of defendant Matthew J. Ryan, Jr., District Attorney of Hampden County, Commonwealth of Massachusetts, should be, and hereby is, accepted, and that said motion should be, and hereby is, ALLOWED;

3. That the magistrate's recommendation with respect to the motion to dismiss pursuant to F.R.Civ. P. 12(b)(6) of the defendant United States Fidelity & Guarantee Company should be, and hereby is, rejected, and that said motion should be, and hereby is, DENIED.

Further, I have determined that plaintiff's motion for summary judgment pursuant to F.R.Civ.P. 56 should be, and hereby is, DENIED, but without prejudice to the rights of either plaintiff or defendant to file a summary judgment motion subsequently. I have further determined that there is no just reason for delay and hereby direct the entry of final judgment on behalf of defendants Justices of Massachusetts and Matthew J. Ryan, Jr., District Attorney of Hampden County, Commonwealth of Massachusetts.

It is so Ordered.

s/ Frank H. Freedman
United States District Judge

Judgments and Opinion

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 80-1627-F

LOUIS SIANO,

Plaintiff,

vs.

JUSTICES OF MASSACHUSETTS, MATTHEW J. RYAN, JR., DISTRICT ATTORNEY OF HAMPDEN COUNTY, COMMONWEALTH OF MASSACHUSETTS, UNITED STATES FIDELITY AND GUARANTEE COMPANY,

Defendants.

MEMORANDUM

May 3, 1982

FREEDMAN, D.J.

This case is before me on the objections of the plaintiff Louis Siano to the findings and recommendation of a magistrate. The magistrate recommended that the motions to dismiss pursuant to F.R.Civ.P. 12(b)(1) or (6) of the three defendants, Justices of Massachusetts, Matthew J. Ryan, Jr., District Attorney of Hampden County, Commonwealth of Massachusetts ("Ryan"), and United States Fidelity and Guarantee Company ("U.S.F.&G.") be allowed, and that the plaintiff's motion for

summary judgment, F.R.Civ.P. 56, be denied. 28 U.S.C. §636(b) requires that I "make a *de novo* determination of those portions of the magistrate's findings and recommendation to which objection is made" and permits me to "accept, reject or modify, in whole or in part, the findings and recommendation made by the magistrate". *Id.*

II

Plaintiff Louis Siano filed this action in July 1980 alleging deprivation of his federal constitutional rights and seeking relief pursuant to 42 U.S.C. §§1983 and 1985 and 28 U.S.C. §§2201 and 2202. Against the defendants Justices of Massachusetts, plaintiff expressly limited the relief sought to a "declaration that his conviction [for insurance fraud] is invalid". Complaint ¶II. While against defendants Ryan and U.S.F.&G., plaintiff prayed for substantital compensatory and punitive damages as well as attorney's fees. A jurisdictional basis was claimed pursuant to 28 U.S.C. §§1331 and 1343.

In ruling on a motion to dismiss pursuant to F.R.Civ.P. 12(b)(6), I must accept as true all material allegations of the complaint. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also O'Brien v. DiGrazia*, 544 F.2d 543, 545 (1st Cir. 1976), *cert. denied*, 431 U.S. 914 (1977). Plaintiff alleges that his problems began in 1972 when as a member of a committee formed to investigate the income of the Eastern States Exposition he "charged in open court, at a hearing, that Matthew J. Ryan, Jr., and others, were defrauding the Eastern States Exposition of a substantial sum of money," after which he was "advised by the District Attorney that he would be sorry, or words to that effect". Complaint ¶VII. Plaintiff further alleges that:

> Shortly thereafter, plaintiff had a fire on other property owned by him. He filed an insurance claim with the defendant [U.S.F.&G.] which was denied. Plaintiff was prosecuted for arson and intent to defraud an insurance company. He was convicted on the intent to defraud charge on October 18, 1973, and given a suspended sentence and probation.
>
> After his appeal was denied, plaintiff discovered that the proof of loss that was used to convict him was not the document he signed, but was a forgery of his and his mother's signatures. The handwriting report of Expert Elisabeth [sic] McCarthy is attached hereto as Exhibit "A".

Complaint ¶VII. Plaintiff conducted his own investigation of his case and filed "allegations against the Hampden District Attoney, [Exhibit] B, and with various state and county authorities . . ." *Id.* Further, a state police investigation was ordered by Governor Dukakis, the results of which were turned over to the Board of Bar Overseers, to which body plaintiff had been referred by the state Attorney General's Office. *Id.* ¶VIII. Plaintiff also moved for a new trial in Hampden Superior Court, but his motion was denied on May 3, 1979, and an appeal therefrom was unsuccessful. Claiming to have exhausted all state remedies, plaintiff avers that he has no other available procedure than this action. *Id.* ¶IX.

With this preface set forth, plaintiff states the gravamen of his complaint:

> Plaintiff alleges that he did not defraud an insurance company as alleged, but is the victim

> of a vendetta on the part of Dist[rict] Attorney Matthew J. Ryan, Jr., and a conspiracy between defendant Ryan and the United States Fidelity & Guarantee Company, who [sic] turned over the forged proof of loss to the district attorney for prosecution. Carolyn Brenton, agent, servant, or employee of the defendant United States Fidelity and Guarantee Company admits that she never met plaintiff, but cannot explain how her notorial seal or signature appear on a copy of the forged proof of loss, [Exhibit] "C".
>
> The criminal charges brought against plaintiff were merely a pretext to stop him from exercising his constitutional rights and were the result of manipulations of the judicial system by a vindictive district attorney. In notorizing the forgery of plantiff's signature and switching the forgery with the original, defendant United States Fidelity and Guarantee Company has committed criminal acts under the laws of Massachusetts and has deprived plaintiff of his property and caused him to be unlawfully convicted.

Complaint ¶IX. Plaintiff thus avers that the defendants, acting under color of state law have deprived him of several enumerated constitutional rights. *Id.* ¶X.

The defendants all moved to dismiss. The defendants Justices of Massachusetts initially advanced three grounds in support of their motion: first, that the complaint failed to allege facts constituting a violation of a constitutional right by these defendants; second, the complaint failed to allege facts constituting

a claim for conspiracy under 42 U.S.C. §1985; and third, that equitable relief in the form of vacating a conviction is not available under 42 U.S.C. §§1983 and 1985 and is not available against these defendants. Subsequently, the Justices filed a supplemental memorandum arguing that the recent decision of the Supreme Court in *Allen v. McCurry*, 449 U.S. 90 (1980) required that plaintiff be collaterally estopped from litigating a claim already determined adversely to him in state court.

Defendant Ryan's dismissal motion was premised on his immunity from suit as District Attorney. U.S.F.&G. set up failure to state a claim upon which relief can be granted and collateral estoppel as defenses in its answer, *see* F.R.Civ.P. 12(b), which the magistrate apparently treated as motions in her findings and recommendation.

In recommending that the motions to dismiss be allowed, the magistrate concluded that with respect to plaintiff's claims against the Justices of Massachusetts, a declaratory judgment is "inappropriate and impermissible to attack the validity of a state criminal conviction . . .," Magistrate's Recommendation at 2, *citing Hanson v. Circuit Court of First Judicial Circuit*, 591 F.2d 404, 410 (7th Cir.), *cert. denied*, 444 U.S. 907 (1979), and *Cavett v. Ellis*, 578 F.2d 567, 569 (5th Cir. 1978), and that collateral estoppel barred plaintiff's claim. Further, the magistrate concluded that defendant Ryan enjoyed immunity from suit. Magistrate's Recommendation at 2, *citing Imbler v. Pachtman*, 424 U.S. 409 (1976). Finally, with respect to U.S.F.&G., the magistrate recommended dismissal on the basis of collateral estoppel.

Unfortunately, the objections seasonably raised by plaintiff to the findings and recommendation of the magistrate do not lend themselves to succinct summary or categorization. On the one hand, plaintiff seems to contest the range of the fact-finding

undertaking by the magistrate and refers throughout his objections to facts not set forth in the complaint itself. On the other hand, plaintiff seems to argue that declaratory relief against the Justices is available, that Ryan is not immune, and that U.S.F.&G. should be found liable on summary judgment.

To the extent that the magistrate relied on matters outside the pleadings in making a recommendation on the dismissal motions of the defendants, I must reject her recommendations. However, for the reasons set forth in the next section, I agree that the complaint must be dismissed as against the Justices of Massachusetts and Ryan. However, I conclude that the complaint on its face does state a claim against U.S.F.&G. Because this defendant's argument that collateral estoppel and/or the statute of limitations bars this action must needs be determined on the basis of materials outside the pleadings, dismissal pursuant to F.R.Civ.P. 12(b)(6) is inappropriate. I could, of course, treat U.S.F.&G.'s motion to dismiss filed after the magistrate entered her recommendation as a motion for summary judgment, or perhaps reach the issue of collateral estoppel through plaintiff's own motion for summary judgment. *See* 6 Moore's Federal Practice ¶56.12 (2nd Ed. 1982) (Summary Judgment for Non-Moving Party). However, I am unable to conclude on the basis of the rather confused record in this case that no genuine issues of material fact remain. Thus, I will deny plaintiff's motion for summary judgment at this time without prejudice to either plaintiff's or defendant U.S.F.&G.'s right to move subsequently for summary judgment.

III

Plaintiff's allegations against the Justices of Massachusetts, to wit, that a conviction against him was obtained through the

use of forged documentary evidence, fail to state a claim upon which relief can be granted under 42 U.S.C. §1983. Irrespective of the issue of collateral estoppel, which of course would not attend a challenge to illegal restraint upon a petition for the "Great Writ" of habeas corpus, *see* 28 U.S.C. §§2241 *et seq.*, a federal district court does not sit as a general supervisory body of the state courts within its district. Moreover, plaintiff does not allege that he has not been afforded adequate procedures within the state court system to challenge his conviction for insurance fraud. Rather, he seems to complain that the state courts have incorrectly decided the issue before them, and requests that this Court by declaratory judgment correct this wrong. I concur with the views of the Fifth and Seventh Circuits—a view which I believe the First Circuit Court of Appeals would adopt if squarely presented the issue—that an action pursuant to 42 U.S.C. §1983 cannot be used to attack the validity of a state court conviction. *Hanson v. Circuit Court of First Judicial Circuit*, 591 F.2d 404, 410-11 (7th Cir.) *cert. denied*, 444 U.S. 907 (1979); *Cavett v. Ellis*, 578 F.2d 567, 568-69 (5th Cir. 1978). Plaintiff's attempts to distinguish these cases are without merit, and I will accept the ultimate recommendation of the magistrate and dismiss the action as to the Justices of Massachusetts.

Plaintiff's allegations against Ryan also fail to state a claim for which relief can be granted. Although plaintiff in conclusory terms sets forth the existence of a conspiracy and the threat by the district attorney, fairly read the complaint does not allege sufficient facts to strip Ryan of the broad immunity from suit accorded prosecutors in "initiating a prosecution and in presenting the State's case". *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). Indeed, plaintiff does not allege that Ryan forged documents, but rather that he used documents turned over to him by U.S.F.&G. Even if the "criminal charges brought against plaintiff

were merely a pretext to stop him from exercising his constitutional rights and were the manipulations of the judicial system by a vindictive district attorney". Complaint ¶IX, the absolute immunity from suit afforded prosecutors precludes the granting of relief to plaintiff against Ryan. Therefore, I will accept the ultimate recommendation of the magistrate and dismiss the complaint as against Ryan.

Although plaintiff's allegations of conspiracy are conclusory, when read in conjuction with the exhibits attached to plaintiff's complaint, sufficient facts are set forth to preclude dismissal of plaintiff's claims against U.S.F.&G. for failure to state a claim. If U.S.F.&G. conspired with Ryan, it became imbued with "color of state law" and does not enjoy the prosecutor's immunity from suit. *cf. Dennis v. Sparks*, 449 U.S. 24, 27-29 (1980), such that the pleading requirement that a defendant act under color of state law for purposes of liability under §1983 is satisfied. *Id.* The deprivations of federal constitutional rights claimed by plaintiff are supported by sufficient factual allegations to state a claim under §1983. *See Gomez v. Toledo*, 446 U.S. 635 (1980). Therefore, I will reject the magistrate's recommendation with respect to U.S.F.&G.'s motion, and deny its motion to dismiss.

IV

Because I find that there is no just reason for delay, I will enter an order dismissing plaintiff's action against the defendants Justices of Massachusetts and Ryan and expressly directing the entry of final judgment, as to these defendants. F.R.Civ.P. 54(b).

Conclusion

For the reasons stated, I will accept the ultimate recommendation of the magistrate with respect to the motions

to dismiss of the defendants Justices of Massachusetts and Matthew J. Ryan, Jr., District Attorney of Hampden County; and direct the entry of final judgment. I will reject the recommendation of the magistrate and deny the motion to dismiss of defendant United States Fidelity and Guarantee Company. Additionally, I will deny the motion for the plaintiff Louis Siano for summary jdugment.

Order accordingly.

s/ Frank H. Friedman
United States District Judge

STATUTORY PROVISIONS

United States Code. Title 42:

"§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

§1985. Conspiracy to interfere with civil rights:

"(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in

any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws:

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons' conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the

United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

United States Code, Title 28:

"§2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing against any adverse party whose rights have been determined by such judgment."